IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL REVISION No. 1072 of 1999

BIRDHICHAND & ORS
V/S
BAJRANGLAL

Mr. BK BHATNAGAR, for the appellant / petitioner

Mr. SANJEEV JOHARI, for the respondent

Date of Order : 27.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

By the impugned order, the learned trial court has held that it is not necessary to bring on record legal representatives of defendant no.4 Kishan Gopal.

The plaintiff has filed the suit under Sec.6 of the Specific Relief Act, impleading four defendants being Birdi Chand, firm M/s.Umashanker Nandlal, Ramavtar and the deceased Kishan Gopal, alleging inter-alia that the plaintiff's ancestoral house is situated in Sardarshahar, and at the ground floor, there were some shops, which have been let-out, and there was one stair-case which was in the form of small shop. It is then alleged that defendant no.1 was let-out one shop along with Veranda, and in the West thereof, there was one stair-case, having one gate in the South. It was alleged that defendant nos. 1 and 2 has sublet the rented shop to defendant nos.3 and 4, and at the instance of defendant no.1, have trespassed over the stair-case also. It was also alleged that this trespass was committed on 21.1.1987 and, therefore, the suit was filed under Sec.6 of the Specific Relief Act on 3.4.1987.

All the defendants filed the joint written statements, inter alia alleging, that shop was taken by defendant no.1 on rent, for the firm defendant no.2, which firm is continuing the business. Then the allegation of subletting was denied, and it was pleaded that entire premise was given on rent, and thus the provisions of Sec.6 are not applicable.

From the record, it is clear, that it is not the case of defendant no.4 in the written statements, that he is in possession of the suit property, rather the allegation of subletting has been denied, and a stand has been taken to the effect that entire property was let-out to defendant no.1 for carrying on business for the firm defendant no.2.

In these circumstances, in my view, if the legal representatives of deceased defendant no.4 are not brought on record, it cannot result in abatement of the suit. Thus I do not find any error on the part of the learned trial court in passing the impugned order.

The revision petition thus has no force, and is hereby dismissed.

The record of the trial court is lying here since 1999, same be returned forthwith, with the direction to the learned trial court, that it being suit under Sec.6 of the Specific Relief Act, it should be decided most expeditiously.

(N P GUPTA),J.

/Srawat/